

DATE: March 12, 2024

HCBA PL#: 24-003

TO: Home and Community-Based Alternatives (HCBA) Waiver Agencies,
HCBA Members, and Waiver Personal Care Services (WPCS) Providers

SUBJECT: WPCS Extraordinary Care Requirements for the Parent of a Minor Child
and Spouse Providers

PURPOSE:

The purpose of this policy letter is to describe the WPCS Extraordinary Care requirements and approval process for the HCBA Waiver for HCBA Waiver Agencies,¹ HCBA members, and WPCS providers; specifically, WPCS providers who are the parent of a minor HCBA Waiver member or an HCBA Waiver member's spouse.

BACKGROUND:

WPCS is a service offered to individuals enrolled in the HCBA Waiver. Approved February 2, 2023, and retroactive to January 1, 2023, the HCBA Waiver was renewed for five years. One of the new provisions in this renewal permits the parents of a minor who is a HCBA Waiver member, or a HCBA Waiver member's spouse, to provide WPCS under "extraordinary care" circumstances. While the prior HCBA Waiver did not permit parent and spouse providers for WPCS members, this rule was relaxed during the COVID-19 Public Health Emergency under the 1915 (c) Appendix K authority flexibilities, which expired November 11, 2023.²

The current HCBA Waiver explains that a legally responsible individual is any person who has a duty under state law to care for another person and typically includes: (a) the parent (biological or adoptive) of a minor child, or the legal guardian of a minor child who must provide care to the child; or (b) a spouse of a waiver member.³ HCBA Waiver and WPCS payment may not be made to a legally responsible individual for the provision of personal care or similar services that the legally responsible individual would ordinarily perform or be responsible to perform on behalf of a waiver member, except at the option of the State and under extraordinary care circumstances as specified by the State in this letter.

¹ This Policy Letter is authorized by [Welfare & Institutions Code \(WIC\) section 14132.991\(b\)](#).

² <https://www.dhcs.ca.gov/Pages/COVID-19-Pro-Part.aspx>

³ [HCBA Waiver, Appendix C \(C-2\), page 275](#).

WPCS OVERVIEW

The WPCS benefit was established by legislation in 1998,⁴ and is designed to assist waiver members with remaining safely in their residence and continue to be part of the community. WPCS includes the following services, as described in the HCBA Waiver:⁵

- **Assistance to Independence in Activities of Daily Living (ADL):**⁶ The WPCS provider promotes the member's ability in obtaining and reinforcing his/her highest level of independence in ADLs by aiding and providing feedback to the member to help him/her reach specific self-care goals in performing or directing his/her caregivers in an activity without assistance from others. Services provided by the WPCS provider are verbal cueing, monitoring for safety, reinforcement of the member's attempt to complete self-directed activities, advising the primary caregiver of any problems that have occurred, providing information for updating the member's Plan of Treatment (POT) and addressing any self-care activities with an anticipated goal completion date.
- **Adult Companionship:** Adult companionship is for waiver members who are isolated and/or may be homebound due to their medical condition. Adult companions must be at least 18 years of age. Waiver members utilizing Adult Companionship must be at least 18 years old. Adult Companion services include non-medical care, supervision, and socialization. To help maintain a waiver members' psychological well-being, adult companions may assist waiver members in accessing self-interest activities or accessing activities in the local community for socialization and recreational purposes, and/or providing or supporting an environment conducive to interpersonal interactions.
- **Services While Member is Admitted to a Health Care Facility:** WPCS providers may be paid while the member is admitted to a health care facility for services provided outside the health care facility setting for a maximum of seven (7) days for each admission to a health care facility (or for the length of the admission to the health care facility, whichever period is shorter). This payment is necessary to retain the WPCS provider for the continuation of services and facilitate the member's transition back to their home environment. To receive this benefit, the member must be enrolled and currently receiving In-Home Supportive Services (IHSS) and WPCS benefits within the prior month of the admission into the health care facility. Each time the member is admitted to a health care facility, the WPCS provider must submit written documentation to the

⁴ [WIC section 14132.97.](#)

⁵ [HCBA Waiver, Appendix C, pgs. 102-104.](#)

⁶ *Activities of daily living* (ADLs) means basic personal everyday activities including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring. *Instrumental activities of daily living* (IADLs) means activities related to living independently in the community, including but not limited to, meal planning and preparation, managing finances, shopping for food, clothing, and other essential items, performing essential household chores, communicating by phone or other media, and traveling around and participating in the community. ([42 CFR § 441.505](#)).

Waiver Agency, or DHCS, describing the specific activities performed, the amount of time each activity required, and the total hours they worked. While the member is admitted to a health care facility, the WPCS provider can provide the following services:

1. Routine housekeeping in the members' absence;
2. Collection of mail and other deliverables and contacting or visiting the member to assist in responding to mail;
3. Food shopping for the member's return to home; assistance in obtaining medications and medical supplies for the member's return home; and
4. Assistance to accept delivery of durable medical equipment and supplies at the member's home.

WPCS providers will not be paid for care that duplicates the care that is required to be provided by the health care facility during the admission, which may include but is not limited to: bathing, feeding, ambulation, or direct observation of the waiver member.

DEFINING “EXTRAORDINARY CARE”:

The Centers for Medicare and Medicaid Services defines “extraordinary care” as care that exceeds the range of activities that a legally responsible individual (i.e., parent of a minor child or spouse) would ordinarily perform in the household on behalf of the person without a disability of the same age, and which are necessary to assure the health and safety of the member and avoid institutionalization.⁷

In the case of a provider who is the parent of a minor HCBA Waiver member, care is considered extraordinary when:

- 1) The need is based on a functional impairment due to the minor's disability, and
- 2) The type of assistance needed is beyond what would normally be expected for a minor of the same age without the functional impairment.

In the case of a provider who is the spouse of an HCBA waiver participant, “extraordinary care” is defined using the “Able and Available” provider standard set forth in Welfare and Institutions Code (WIC) section 12301(a),⁸ which states:

⁷ Application for a §1915(c) Home and Community-Based Waiver, Technical Guidance, can be found at: https://wms-mmdl.cms.gov/WMS/help/35/Instructions_TechnicalGuide_V3.6.pdf, page 119-123.

⁸ [WIC Section 12301\(a\)](#).

- 1) An able and available spouse is presumed to be available to provide, without compensation, assistance with all services, other than direct care personal care services and paramedical services, and
- 2) If the spouse must leave full-time employment or is prevented from full-time employment because no other suitable provider is available, the spouse may also be paid to assist with accompaniment when needed during necessary travel to health-related appointments and protective supervision.

The Waiver Agency, or DHCS in areas where there is no Waiver Agency, must assess and document in the member's POT whether the WPCS care required by the member is considered extraordinary based on the criteria above.

ASSESSING EXTRAORDINARY CARE NEEDS FOR MINOR HCBA WAIVER MEMBERS WITH PARENT PROVIDERS:

Waiver Agencies, or DHCS in areas where there is no Waiver Agency, cannot authorize WPCS hours to be provided by a parent for any minors who are HCBA Waiver members unless extraordinary care needs are demonstrated. In making this determination, the Waiver Agency, or DHCS in areas where there is no Waiver Agency, will utilize developmental milestones to determine if the need is beyond what would normally be expected of a minor of the same age without a disability, and ensure the need is based on a functional impairment related to the minor's disability. This means that parent providers may be paid for some but not all types of WPCS available through the waiver, based on the minor HCBA waiver member's age, functional impairment, and normal parental responsibility.⁹ In determining the number of hours of WPCS that should be authorized, the Care Management Team (CMT) must consider which services are available and authorize time only for those which are determined to be an extraordinary care need. DHCS will be developing and releasing job aids and resources providing information about age-appropriate guidelines specific to WPCS to assist Waiver Agencies in making consistent assessments of extraordinary care needs for minor HCBA waiver members.

Assistance to Independence with ADLs

Authorization of this service means that the parent provider of the minor HCBA Waiver member is assisting the member in gaining and maintaining independence with ADLs by providing verbal prompting, reinforcement of the member's attempt to complete self-directed activities, and/or addressing any self-care activities with an anticipated goal completion date. When authorizing time for assistance to independence with ADLs, the CMT must consider whether a child of the same age, without a functional impairment, would be expected to require the same level of assistance with that activity. The CMT shall only authorize time for those activities that are age appropriate.

Example Scenario: Paramedical Services

⁹ [HCBA Waiver, Appendix C \(C-2\), page 275.](#)

Jason is a little over one year old, was born with a congenital heart defect and had surgery shortly after birth. Jason requires medication administration and feedings to be administered via a G-tube. Because of his impairments, he has not begun potty training. Additionally, his doctor states that he will have developmental delays as he gets older. Jason's mother is requesting WPCS to assist to independence with ADLs because she must administer Jason's G-tube feedings and complete diaper changes throughout the day.

In the scenario above, Jason has a disability and will undoubtedly require assistance with all ADLs. Based on normal developmental milestones, a one-year-old child would require assistance with potty training and diaper changes regardless of functional impairment. In this case, the CMT would not authorize WPCS hours for assistance to independence with bowel and bladder care. Similarly, a one-year-old child would not be expected to be able to feed or self-administer medications, so it would not be age-appropriate to authorize WPCS for assistance to independence with feeding and medication administration. However, the CMT may authorize Paramedical Services through the waiver to be provided by a parent provider without need for extraordinary circumstances, due to need to administer the feedings and medication via G-tube, if the child is already receiving Paramedical services through the IHSS program.¹⁰

A parent provider may also be assisting the member by monitoring for safety in the completion of ADLs. Monitoring for safety would be authorized if the parent provider must observe and monitor the minor HCBA waiver member's actions and intervene as needed to safeguard them from injury, hazard, or accident. The behaviors seen must be well outside of what would be appropriate for a minor of that age with respect to that ADL. Additionally, when the Protective Supervision service has been authorized through IHSS program, monitoring for safety would also likely be appropriate as a WPCS activity.

Example Scenario: Safety Monitoring

Stephanie, a 4-year-old, was diagnosed with Prader-Willi Syndrome. Her mother noticed that she eats incessantly and throws temper tantrums to get food. She is now able to open the refrigerator and climb on a chair to reach food in the cupboard. She will do anything to get to food; even locks on the cupboard cannot keep her from getting food. She currently weighs 80 lbs., and her doctor says that she is morbidly obese and at risk of many chronic

¹⁰ The [HCBA Waiver, Appendix C, page 113](#), and [WIC section 12300](#) define Paramedical services as : "...services that are ordered by a licensed health care professional who is lawfully authorized to do so, which persons could provide for themselves but for their functional limitations. Paramedical services include the administration of medications, puncturing the skin or inserting a medical device into a body orifice, activities requiring sterile procedures, or other activities requiring judgment based on training given by a licensed health care professional. These necessary services shall be rendered by a provider under the direction of a licensed health care professional, subject to the informed consent of the recipient obtained as a part of the order for service." The HCBA Waiver member must be receiving Paramedical services through the IHSS program.

health conditions if her eating is not controlled. She eats so fast that her mother cannot leave her unattended at all because she is at risk of choking.

Since Stephanie is only four years old, WPCS hours is not applicable for parent provider's assistance with feeding, as a four-year-old child without a disability would require such assistance and would not be expected to feed themselves independently. However, Stephanie's actions and behaviors towards eating show that there is a need for monitoring for safety related to meal preparation and feeding. Without sufficient monitoring with this activity, the minor HCBA Waiver member would be unsafe. Additionally, Stephanie has been authorized Protective Supervision through the IHSS program. Therefore, the CMT may authorize WPCS for safety monitoring under this scenario.

Adult Companionship Not Available for Minor HCBA Waiver Members

As indicated in the HCBA Waiver, adult companionship must only be authorized for waiver members who are at least 18 years old. Therefore, parent providers of minor HCBA waiver members cannot be paid to provide the adult companionship service.

Services While Member is Admitted to a Health Care Facility

Similar to the services for Assistance to Independence with ADLs, when authorizing WPCS hours for services when a member is admitted to a health care facility, the CMT shall consider developmental milestones to determine if the need is beyond what would normally be expected for a child of a certain age and ensure the need is a result of the child's disability.

ASSESSING EXTRAORDINARY CARE NEEDS FOR ADULT HCBA WAIVER MEMBERS WITH SPOUSE PROVIDERS:

When applying the extraordinary care requirements in a case, the Waiver Agency, or DHCS in areas where there is no Waiver Agency, must first determine if the provider is considered to be the member's spouse. For purposes of this policy letter, a spouse is defined as a member of a married couple, or a person considered to be a member of a married couple for Supplemental Security Income/State Supplementary Payment (SSI/SSP) purposes.¹¹ The Waiver Agency may establish that the individuals living in the same household are married in one of four different ways:

1. If the WPCS recipient lists the other individual living in the same household as a spouse in the application for entry into the Home and Community-Based Services Waiver program or the Plan of Treatment; or
2. The Social Security Administration (SSA) determines that either of the two individuals are entitled to the other's SSI benefits as the person's spouse; or

¹¹ [20 C.F.R § 416.1806\(a\)](#).

3. Two individuals are living together in the same household at or after the time one of the individuals applies for SSI benefits and both individuals lead people to believe they are married; or
4. The recipient is in a registered domestic partnership.

As long as the couple remains married and does not obtain a divorce or annulment of the marriage, or is not legally separated, the requirements of this policy letter would apply. This may include legally married couples who are living in separate locations or are estranged. Couples receiving benefits due to being treated as spouses for purposes of Social Security will also be treated as spouses for WPCS.

Once it has been determined that the WPCS provider is the HCBA waiver member's spouse, then the Waiver Agency, or DHCS in areas where there is no Waiver Agency, must determine which services the spouse is able to be paid to provide pursuant to WIC section 12301(a).

Assistance to Independence with ADLs

A WPCS provider that is the spouse of the HCBA waiver member may be paid for this service when it is required by the HCBA waiver member as a result of their disability and/or functional impairments. Additionally, the spouse provider may be paid to provide monitoring for safety and Paramedical Services. The HCBA waiver member must be receiving Paramedical Services through IHSS to be eligible for Paramedical Services in the HCBA Waiver.

Adult Companionship

A WPCS provider that is the spouse of the HCBA waiver member may be paid for Adult Companionship only when the spouse has had to leave full-time employment or is prevented from full-time employment because no other suitable provider is available to assist the HCBA waiver member due to the level of need required.

Example Scenario

Bruce is a 64-year-old who resides with his spouse. He has a long history of smoking and is being treated for emphysema. Bruce has also recently been diagnosed with Alzheimer's. He is ambulatory for short distances, and his wife states that recently he has been leaving the house when no one is looking. She said at times he does not recognize her and does not know his address. For these reasons, Bruce's wife has left her job to help at home with these issues. Bruce's wife takes him to the local community center so he can socialize, exercise, and possibly slow down the progression of his disease. Bruce's wife also provides accompaniment and supervision while he is at the community center.

In this scenario, Bruce has a need for adult companionship based on his inability to leave the house safely on his own due to Alzheimer's. Since Bruce's wife is no longer working because they could not find any other providers to assist due to the behavior

that Bruce was exhibiting at home related to Alzheimer's, she would be able to claim Adult Companionship services even though she is currently married to Bruce and is considered a legally responsible adult.

Services While Member is Admitted to a Health Care Facility

When authorizing WPCS hours for services while the member is admitted to a health care facility, the CMT must consider the standard set forth in WIC section 12301(a) and only authorize time for providing services for which the spouse provider is able to be paid because they require extraordinary care.

Example Scenario

Mario is a 65-year-old who resides with his spouse. He has a long history of smoking, is being treated for emphysema, and is on oxygen 24 hours a day. He has mild dementia and is not able to monitor his oxygen. Mario is not ambulatory and must be moved around the house in a wheelchair. Mario is frequently hospitalized requiring multiple days of in-hospital care. Mario's wife stated she does grocery shopping, laundry, and housecleaning in anticipation of Mario returning home. Additionally, Mario's wife must coordinate with medical providers regarding discharge and to receive any required medications, oxygen supplies, and durable medical equipment before he returns home.

In this scenario, Mario's wife would not be paid for the grocery shopping, laundry, and housecleaning activities because WIC section 12301(a) states that a spouse provider may only be paid for direct personal care services. Additionally, absent the hospitalization, Mario's wife would normally complete these activities on behalf of her household and spouse because she is considered a legally responsible adult. However, Mario's wife could be paid for the time she spent coordinating discharge activities to facilitate the member's transition back to their home environment as these activities are related to the medical or direct personal care required by the HCBA waiver member.

WAIVER AGENCY'S RESPONSIBILITIES:

Prior to a parent of a minor who is a HCBA Waiver member or the HCBA Waiver member's spouse being authorized to provide services, the Waiver Agency must clearly document in the HCBA applicant/members' Plan of Treatment that the Waiver Agency has determined the need for extraordinary care to be provided by the parent or spouse.¹² The Waiver Agency must also upload into MedCompass the assessment and all background documentation gathered by the Waiver Agency that was used in evaluating whether the parent of a minor who is a HCBA Waiver member or spouse provider met the extraordinary care criteria set forth in this policy letter.

¹² [HCBA Waiver, Pg. 275](#). To ensure payments made to legally responsible adults/legal guardians providing personal care to their spouse or minor child are only made for services that are rendered, a designee (i.e., not a dependent of the legally responsible adult) must be identified to sign timesheets.

March 12, 2024

Waiver Agencies shall complete a review of impacted WPCS cases as soon as administratively feasible, but no later than the next regularly scheduled reassessment. As cases are reassessed according to the amended HCBA Waiver requirements, Waiver Agencies will be responsible for ensuring that time is authorized in compliance with the requirements of this policy letter.

If you have questions regarding the requirements of this letter, please contact the WPCS Hotline at (916) 552-9214 or submit your question to the HCBA email inbox at HCBAAlternatives@dhcs.ca.gov.

Sincerely,

ORIGINAL SIGNED BY

Cortney Maslyn, Chief
Integrated Systems of Care Division
Department of Health Care Services